BOSTON UNIVERSITY
SCHOOL OF RELIGIOUS AND SOCIAL WORK

THE DEVELOPMENT AND SOCIAL SIGNIFICANCE OF DELINQUENCY LAWS IN MASSACHUSETTS

A Thesis
submitted by
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(A.B. Boston College, 1936)
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Thesis Subject: The Development and Social Significance of Delinquency Laws in Massachusetts.

I Introduction.

A. Situation--The laws regarding juvenile delinquency have advanced slowly and deliberately from 1642 to the present. These laws have been the forerunners of those in many other states, yet, in spite of its preeminence in this field, Massachusetts has never had these laws studied from the viewpoint of their social significance.

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B. Approach--As we present each pertinent law we shall also try to portray the sentiment of the times which called for this law, consider it in relation to past laws, and perhaps future, and ponder over its social significance.

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A. Basis for juvenile approach.

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Chapter I

Introduction

Chapter 1

Introduction

A. Situation-- Foremost among the problems which are the concern of those who strive to help their fellows live more abundantly is the problem of delinquency. Unemployment, old age, poverty, mental deficiency, etc., are all of tremendous importance because of what they mean to society, and to the community as a better place in which to live. Some of us are concentrating our efforts on the problem of juvenile delinquency. For it is recognized that during the youthful formative periods of life that tendencies towards social misbehavior begin and that this is the time to understand the cause and prevent any warping of character. Rather than attempting to evolve the why of this behavior or the how to better it, as is being done in an excellent manner by so many others, the writer will attempt to trace by slow and lengthy evolution of the laws relative to juvenile delinquency in Massachusetts. By doing this we will understand more fully the spirit of our present laws, why they are not more successful, and what we can do about it. This understanding will naturally be of assistance in any treatment for delinquents. The laws of Massachusetts which have shown a traditional and sustained solicitude for children have been the forerunners of those in many other states. Massachusetts is considered the home of probation, had the first state reform school, and was in 1874 affording separate trials for juveniles.

Yet in spite of the preeminence this state has achieved in this field her laws have never been revised with their developmental and social significance in mind. It is with these things before him that the writer is studying the situation feeling that something can be derived for future treatment of our juvenile delinquents from a study of the laws which affect them.

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B. Approach-- In making this study we shall attempt to advance year by year with the growth of these laws although we shall keep in mind three well defined eras in the treatment of juvenile delinquents. First, the Colonial or Revolutionary period beginning with the foundation of the colony in 1629 down to the time when stocks, whipping posts, etc., were abolished. In this era no distinction was made as to age, all were treated absolutely alike. From the end of that era to 1854, the founding of the Industrial School for Girls at Lancaster, marks as period of transition during which time the motif was the protection of society, developing towards its close a deeper concern for juveniles. 1854 to the present day is the modern or advanced period during which the solicitude of the state for her children has reached the highest point. We shall show within these periods how this development has resulted in our juvenile courts and in our training schools, and point out the effect they have had upon subsequent legislation and in developing the theory that children differ from adults. After some historical considerations of delinquency we shall study our early institutions and then the procedures against juveniles. Our treatment will be chronological within the two divisions, keeping in mind always the three developmental periods which we have mentioned. That we might be better acquainted with the sentiments of the different periods we have read not only the various acts and laws but also books, periodicals, and letters, and in this way we shall see what Massachusetts has accomplished.

Chapter II

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> "Any one magistrate by warrant directed to the Constable of that town shall call such offender before him, and upon conviction sentence him to endure such corporal punishment by whipping or otherwise as in his judgment the merits of the case deserve, not exceeding ten stripes for one offence or bind the offender to make his appearance before the next County Court..."1

And so it seems that in our early days there was nothing significant to write about or to legislate for in regard to better treatment of children. The earliest writings we are able to find are "A Letter to Lord Provost on the Expediency of a House of Refuge for Juvenile Offenders" by William Brebner in 1829, and that excellent book written 1833 by de Tocqueville and de Beaumont, Du Systeme Penitentiare aux Etats Unis. Unfortunately the preliminary hearings given to a proposed law are not recorded which could give a picture of the public opinion prior to and at the time a particular law was passed. However we have not been entirely without references, as the bibliography will indicate.

B. Methods of treatment in England and Europe and their transference to America. In studying the progress of our delinquency laws we must keep in mind something of what has gone on before us in the stream of life. Those customs, occurences, etc., which necessarily have shaped

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the lives of our ancestors are also part of us and it is sometimes with difficulty that we free ourselves from old ways of thinking. We must not forget that the first laws in this country were made by those people who had left England for religious and economic differences. They were a stern, strict people, suppressed and for the most part wanting in the goods of this earth, determined that all in this new land would be treated fairly and equitably. Justice would prevail, and any interference with another's rights would be punished. These people in considering transgressions never thought of children as differing from any other personality. To understand this attitude we must understand what they were trying to escape. They were trying to repudiate any vestige of personal slavery and serfdom. The Middle Ages and later years were rife with slavery and class distinction. The common law of England practically reproduced the dependent status which the older Roman law had assigned to all members of the family except the head. The determination to have a justice that previously was not know to them occasioned this idea of punishment regardless of age, politics, prestige, etc. both in this country and Europe. We have only to recall Dickens' writings to picture how children and adults were treated for their crimes.

In America there was not a single institution for the training of juvenile offenders at the start of the nineteenth century. They were being committed to jails and prisions along with adult offenders. It was not until 1836 that Revised Statutes of Massachusetts declared that:

> "If any boy under the age of fifteen years shall be convicted of an offence which is punishable by imprisonment within the state prison,...(and)...if sentence of solitary imprisonment and confinement at hard labor for a term of not more than three years is awarded against such convict,...the court shall order such sentence to be executed in the house of correction, or in the county jail, and not in the state prison." 1

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This law still recognized the delinquent youth as a criminal, subject to punitive treatment and continued to imprison him with adults, although this above quoted law marks an important step in the removal of youthful offenders from jails and prisons. Insight into treatment of children is given us by H.H. Lou when he writes,

> "Another boy of 10 was sentenced to death because it appeared that he had hid the body he killed, which hiding manifested a consciousness of guilt and a discretion to discern between good and evil. As late as 1833 a death sentence was pronounced, but unfortunately not carried out, upon a child of 9 who broke a glass and stole two pennyworth of paint." 1

The repugnance to placing children with all sorts of degenerates and criminals was being developed, and from this first treatment grew the lofty ideals we have today even though they may not be all practised.

1 Lou, H.H:"Juvenile Courts in United States,"p. 14.

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As we see, the growth of the concept that children differ from adults is relatively slow in its development. But in this second period there is apparent the increasing concern for children since in the early years of the nineteenth century there developed institutions which aimed at the education and reformation of youth in lieu of the older punitive methods. We feel that the development of our institutions for juveniles and for this reason we treat of the creation of the early institutions. The section on institutions outside of Massachusetts is to be used for purposes of comparison and to picture the development at the time when Massachusetts was starting her institutions.

A. Outside of Massachusetts: Let us first consider those early institutions which were situated not only outside of Massachusetts but also outside the United States. Perhaps the first on record is that founded by Pope Clement XI, "for the correction and instruction of profligate youth, that they who when idle were injurious may when taught become useful to the State." This was inscribed over the hall set aside for the youth in the hospital of St. Michael at Rome. This hall was described as having three tiers and sixty cells.[1] Yet while the good Pope foresaw the need of youth he could not shake off the attitude of criminal status and treatment which was a part of the times.

It was in 1788 that a "number of Christian gentlemen founded the Philanthropic Society of London. It accepted delinquent children and distributed them into families of twelve in its modest dwellings, placing

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at the head of the whole group, a general superintendent and in three families a gardener, a tailor, and a shoemaker.[1] We cannot help but think of this as a precursor of "family system" that was later to become famous. There were other institutions established in England at the start of the next century but we need not proceed further for we all know of the general movement in the middle of the nineteenth century which resulted in the excellent arrangement there of institutions for juvenile offenders.

Then in 1813, a Johannes Falk a native of Danzig lost four dearly beloved children within a few days and the bereaved father resolved to become the father of those unfortunate children who had been deprived of a sound education and were in the path of crime and destruction. He founded the "Society of Friends in Need" for the children of criminals and for criminal children at Weimar.[2] There then followed the creation of other institutions of the same nature in Germany in quick succession.

While these child saving institutions were being founded in Europe there was a similar agitation in the United States but of origin independent and not as an offshoot of the European idea we are told. It was inevitable that it should happen thus for there was developing throughout the world a more humane treatment for law breakers in general and the fate of children imprisoned with hardened criminals naturally attracted socially minded men.

1 Wines: The State of Prisons and Child Saving Institutions, p. 75 ff.

2 de Beaumont and de Tocqueville: Du Systeme Penitentiare aux Etats Unis, p. 108.

New York City witnessed the first organized and constructive movement to solve the problem of juvenile delinquency. In 1815 a group of some fifteen prominent citizens met in the home of Josept Curtis and resolved to study the sources or causes of crime and poverty.[1] This group in 1818 formed the Society for the Prevention of Pauperism. In this gathering of men were Joseph Griscom, a professor of chemistry and natural philosophy and Thomas Eddy who had been the leading spirit in the establishment of the State Prison(Newgate) New York in 1796. Griscom made in 1818-19 a tour of the British Isles and the Continent during which time he studied charitable institutions and a society for the improvement of prison discipline and for the reformation of juvenile offenders.[2]

At the first the Society recommended simply a division of the inmate population of the State prison and the erection of a separate building for juveniles within the prison enclosures. In a report of the Society we read,

> "These prisons should be schools of instruction rather than places of punishment, like our present State prisons. The youth confined there should be placed under a course of discipline severe and unchanging but alike calculated to subdue and conciliate...The end should be his (the youth's) reformation and future usefulness." 3

While their first aims might now be considered naive and crude they did nevertheless accomplish a great deal through enlightening public opinion. For several years they labored to have established a house of refuge,

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3 Report of Society for Prevention of Pauperism (1822) p. 89 ff.

being prepared to start it with voluntary subscription. On December 18, 1823 this society submitted a detailed plan for a house of refuge providing for for

1. "An asylum where the juveniles might be received.
2. Statutes empowering magistrates to send juveniles here, instead of the city peneteniary.
3. A place where neglected boys whose parents "either from vice or indolence, are careless of their morals and mind and leave them exposed in rags and filth, to miserable and scanty fare, destitute of education, and liable to become the prey of criminal associates.
4. A place for the reorientation of otherwise unattached youthful convicts, discharged from prison.
5. A place for delinquent females who are either too young to have acquired habits of depravity, or those whose lives have in general been virtuous." 1

Then in 1824 the state of NewYork sanctioned the creation of the New York House of Refuge by this private society thus giving it financial support from public sources. The only institution for the reformation of juvenile offenders in United States at that time. While this institution is outside the scope of our study we must remark on the admirable first superintendent, Mr. Joseph Curtis who was far in advance of his times when he tried a theory of administration which subordinated system to personality as a means of education. And we must also call attention to the study of De Beaumont and de Tocqueville in 1833 in which they summarize the results of the work of the New York House of Refuge by saying that of the 513 children returned to the civic community from the House of Refuge, in a given recent year, the conduct of more than 200 had been such as to prove that the efforts of the Institution had saved them from infallible ruin.[2]

1 Homer Folks: "The Care of Destitute, Neglected, and Delinquent Children," Charities Review, p. 113.

2 de Beaumont and de Tocqueville, op. cit.,p.

The founding of this New York institution gave impetus to the creation of several other institutions in other cities. These institutions with varying degrees of state support and supervision, were established in the following order.

Philadelphia House of Refuge--1826
Boston House of Reformation--1826
Boston Farm School--1833
Herr Wickern's Rauche House at Hamburg, Germany--1833
M. Demetz' Mettray Institution at Tours, France--1839 [1]

This section has presented something of the development of institutions for juveniles outside of Massachusetts. We have not attempted to present all of them or important ones. The House of Refuge in New York was stressed because of the similarity of New York's development to that of Massachusetts. Let us note as we read the next section the Boston House of Reformation compares with the House of Refuge in NewYork.

B. With Massachusetts: 1. Of the above we are concerned only with the Boston House of Reformation, established by the Council of the City of Boston, with the authority from the State Legislature in 1826. Now it was possible to send children where who under the former law had been committed to the State Prison.[2] The institution was for adult offenders but in 1837 was removed to a separate building although still near the house of correction.[3]

The house in Boston seems worthy of especial consideration because of its advanced ideas, so much advanced that the committee from the Common Council in 1832 found the devotional exercises excellent but the

1 Mass. Board of Managers, World Fair, 1893, p. 10.

2 Acts of 1826, Chapter 182, Section 2.

3 Folks, op. cit., p. 117.

scholastic instruction poor. The Committee felt that the institution had for its object "convertible practicability and not recreation and show."[1] As a result Mr. Wells, the superintendent, was replaced. Since that time it has always been felt that the Council was desirous of having the children earn money as became apparent under a new superintendent. We can only regret that Mr. Wells was unable to continue for we are certain that if the House of Reformation had continued under his enlightened principles we would be further advanced in this field today than we are.

Under Mr. Wells the new arrival was examined by the chaplain as to "habits of life, principles and passions," and told the cause of his coming, the object of his remianing, probable time of remaining and of the rules of the institution."[2] Newcomers were then placed in probationary groups until they had shown their fellows the special group in which they belonged. The children were members of one of the "Bon" or "Mal" grades according to their behavior and it was on this plan that discipline was maintained. The good children were rewarded with keys to the house, had birthdays delebrated, were allowed to go to town at times and other privileges; the bad children lost their voting rights, were not allowed to converse with their comrades, and were deprived of play period, etc.

> "If any difficulty arises in the classification of morality, or whenever an offence against the discipline has been committed a judgment takes place. Twelve little jurymen taken from among the children of the establishment prounounce the condemnation or acquittal of the accused." 3

1 Ibid., p. 118ff.

2 de Beaumont and de Tocqueville, op. cit., p. 212.

3 Lewis: op. cit., p. 118.

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Monitors and officers were elected by the group themselves.

Naturally this philosophy did much to rehabilitate the youthful offenders. Charles Dickens also noticed this House of Reformation and took great delight in writing of it,

> "The design and object of this Institution is to reclaim the youthful criminal by firm but kind and judicious treatment; to make his prison a place of purification and improvement, not of demoralization and corruption, to impress upon him that there is but one path, and that sober industry which can ever lead him to happiness; to teach him how it may be trodden, if his footsteps have never yet been lead that way; and to lure him back to it if they have strayed: in a word, to snatch him from destruction and restore him to society a penitent and useful member." 1

In Boston only five hours and a half are daily occupied by labor in the workshops as against at least eight in New York and Philadelphia. Four hours in school, more than one hour is spent in religious instruction and all the children have two hours and a quarter for recreation. The contractor or his agents come into the establishment and teach the young the various arts. De Beaumont and de Tocqueville emphasize the fact that the children are not made to work in order to yield profits; the only object in view is to give them habits of industry, and to teach them a useful trade and contrasts the state of affairs in France in which the discipline is entirely envaded by the contractors.[2]

We read that boys and girls were separated in 1840, but after a change of superintendents in 1841, the girls were readmitted as the superintendent said he "could reform boys and girls too, in the same house."[3] Repeated references to the income derived from contracting the labor of the children are found, and "in 1846 nearly $1000 in revenue was contributed by

1 Charles Dickens: American Notes, p. 58.

2 Lewis: op. cit., p. 117.

3 Ibid., p. 117.

light shoemaking." 1

By some this institution was regarded as so desirable a school for boys that parents endeavored to have their children placed there without legal or just cause. Again it was represented as a prison of severe character. No matter which is true it will always be remembered as the first publicly supported institution of its type and is deserving of fame for what it contributed in the way of skillful and kind treatment of children.

This institution marks an important step in the treatment of delinquents. We place this school in the transition period, spoken of in the introduction which extended from the time that stocks and whippings posts were abolished to the establishment of the Industrial School for Girls. Despite the fact that Mr. Wells, who for a time was superintendent of the House, possessed advanced ideas on the treatment of delinquents, there was no deep concern for the children on the part of the public or of those in charge of the institution. The chief motive, as we have seen, was the protection of society through changing the habits of these potential criminals, and incidentally to profit by the labor of the children. It is important that we recognize,however, that some had the desire to assist these children for their own sakes, that they might grow up in a happier and healthier mode of life. The need of this institution and then its crowded condition acted as a warning to the leaders of the era that there was a need of more such schools. And so there was established in 1833 the Boston Farm and Trade School, and twenty years after the House of Reformation came Lyman School or which we shall soon treat. We believe that the House of Reformation is of significance not only because it pointed out

1 Ibid., p. 117.

the need of the institutions soon to follow but also because some of its methods can still be imitated.

2. State Reform School: Although three juvenile reformatories were established between 1824 and 1828 in the United States it was almost 20 years before there was another institution. This was Lyman School, established by the State at the suggestion of Hon. Theodore Lyman, an ex-Mayor of Boston. He saw the need of a State-controlled institution when he had been for a time charged with the management of one of those privately-controlled institutions, the Boston Farm School. There had been agitation for several years but it was a subscription of $20,000 from Mr. Lyman that induced others to back the project and caused the legislature to vote additional funds for the erection of the buildings. The school officially opened on November 1, 1848.

However, not all of Mr. Lyman's ideas were incorporated in the new institution. A "school for viscious young persons who had just entered upon a lawless career,"[1] had been his plan but section 4 of chapter 165 of the laws of 1847 sets the minimum age limit at sixteen years, which was higher than Mr. Lyman thought expedient. In 1859 when the School Ship was established the age limit was reduced to fourteen years, but then in 1872 when abolished, the age limit was raised to seventeen years. In Section 4 of the same act which established the Reform School an alternative sentence was established which shows how difficult it was for the Legislators and public to consider the delinquent as a child needing care and not a criminal. It provided that the judge could sentence the boy "to such punishment as whould have been awarded if this act had not been passed." Also the

1 Mass. Board of Managers, World's Fair, 1893, p. 25.

judge could give the boy his choice of these two sentences and the natural choice was the shorter although more severe in a punitive institution. Thus the new school was hampered by the alternative sentence and was unable to work with some delinquents who required this assistance. In addition to this a judge who was not in sympathy with the Reform School idea or its administration could very easily disregard the whole school with its possible rehabilitating effects.

Because of economic factors Mr. Lyman's ideas regarding the teaching and training of the boys would be employed mainly on the land in agriculture, while "during the winter months more time would be given to the boys in the common branches of education, and it may be instruction in some of the mechanical trades."[1] But"as the earnings of the boys engaged in the mechanical trades was considerable and contributed largely to the support of the institution,"[2] this feature was soon stressed--the same situation as that in the House of Reformation years before.

Anne B. Richardson writes of the Lyman School in 1893,

> "This institution was intended for a reformatory but from the beginning the main building was to all intents and purposes a prison. The doors ware bolted, the windows barred, and the domitories were practically cells, while places of confinement were provided not unlike the ordinary prison 'solitary'...those in the main house were thus wholly employed in locked workshops." 3

Let us consider another's opinion of the school and from a different

1 Mass. Board of Managers, p. 11.

2 Ibid., p. 11.

3 Mrs. Anne B. Richardson: "The Mass. System of Caring for State Wards," p. 60.

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"This institution was intended for a reformatory but from the beginning the main building was to all intents and purposes a prison. The doors were bolted, the windows barred, and the dormitories were practically cells, while places of confinement were provided not unlike the ordinary prison 'solitary'...those in the main house were thus wholly employed in locked workshops." 3

Anne B. Richardson writes of the Lyman School in 1923,

...and training of the boys would be employed mainly on the land in agriculture, while "during the winter months more time would be given to the boys in the common branches of education, and it may be instruction in some of the mechanical trades." But as the earnings of the boys engaged in the mechanical trades was considerable and contributed largely to the support of the institution," 2 this feature was soon stressed--the same situation as that in the House of Reformation years before.

Judge could give the boy his choice of these two sentences and the natural choice was the shorter although more severe in a punitive institution. Thus the new school was hampered by the alternative sentence and was unable to work with some delinquents who required this assistance. In addition to this a judge who was not in sympathy with the Reform School idea or its administration could very easily disregard the whole school with its possible rehabilitating effects.

Because of economic factors Mr. Lyman's ideas regarding the teaching

1 Mass. Board of Managers, p. 11.

2 Ibid., p. 11.

3 Mrs. Anne B. Richardson: "The Mass. System of Caring for State Wards," p. 20.

viewpoint.

> "The present system of seven or eight families, each in charge of a master or mistress, each employed in domestic work of the home andon the farm--each family having regular school training for three or four hours daily, regular instruction in the Sloyd system of woodworking, in military drill with necessary recreation, this system is as satisfactory as that of any institution can be." 1

We feel that this is more than extreme optimism for where previously there would be thirty-one whipping among one hundred boys, now there were but eight.

We have also an interesting statement coming from a former superintendent of Lancaster regarding the family system as practised at present.

> "For the short period that these youths should be detained in such institutions before trying the experiment of placing them in actual families and in view of the constant earnest discipline of labor indispensably requisite for the training of such idle and vagrant children, it may be questioned whether the results gained compensate the additional expense and greater risk to the harmomy of the establishment arising out of so many subordinate but in some measure independent authorities." 2

Today, however, there are few who doubt the efficacy of this plan which was not tried at Lyman School until 1859 when they reorganized after a serious fire.

a. Nautical Branch of the Reform School: We mention this merely in passing as an attempt of our legislature to care for the boys over sixteen years who committed delinquencies. It was in a way a gesture of what had to come in time although much later--a training school for older boys. This training ship was in use from 1839 to 1872 when it was abolished.

1 Ellis: "Mass. Care of Dependent and Delinquent Children,"1893, p. 13.

2 Pierce: A Half Century with Juvenile Offenders, p. 174.

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a. Practical Effects of the Reform School: We mention this merely in passing as an attempt of our legislature to care for the boys over sixteen years who committed delinquencies. It was in a way a feature of what had to come in time although much later--a training school for older boys. This training only was in use from 1839 to 1872 when it was abolished.

1 Ellis: "Mass. Care of Dependent and Delinquent Children," 1893, p. 16.

2 Pierce: A Half Century with Juvenile Offenders, p. 174.

It cared for boys from 14 years to 18 years and then in 1872 it was found necessary to raise the age limit of Lyman School to 17 years. New York also had a school ship, the "Mercury" established in 1869 but abandoned in 1875 as impracticable, also.

3. The Industrial Schools for Girls: The consideration and concern for girl offenders seems to lag behind that for boys. It was not until 1854, seven years after Lyman School had been established that the Industrial School for Girls at Lancaster was completed. We read that the advocates of the school recognized that agitation for its establishment simultaneously to that for the State Reform School would delay favorable legislation. Then, however, Colonel Francis B. Fay labored in behalf of this measure, he "deserves for many reasons, the title 'father' to the institution, to him the State owes the admirable location of the School and the marked economy attending its establishment."[1]

This institution"for the instruction, employment and reformation of exposed, helpless, evil-disposed and viscious girls" over seven and under sixteen years of age.[2] was established only after a careful examination of the plans of the more prominent European and American institutions for the reformation of juvenile offenders and calling to aid the practical thinkers and writers upon this delicate question.[3] Heretofore every public institution of the kind in this country had been constructed on the "congregate plan," very similiar to a penitentiary although the inmates

1 Pierce: "A Half Century With Juvenile Offenders," p. 240.

2 Mass. Board of Managers, p. 37.

3. Pierce: op. cit., p. 240.

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2 Mass. Board of Managers, p. 27.

3. Pierce: op. cit., p. 240.

might not have worn penal garb or aspect in their discipline. From the very beginning the girls were housed by the family plan, not more than thirty girls in a single household. The whole place looked like a little colony of regular dwellings as it really was, for with but a few additions a whole Shaker settlement was taken over. Certainly an improvement over the early years at least of the Reform School where "the main building was to all intents and purposes a prison".[1] For many years all modern improvements were prohibited. This was, we are told, not so much to save money as to prepare the girls for the rigors of New England farm life where they would probably be placed out at the expiration of their terms. The prevailing philosophy was that constant occupation and engrossing hard work would leave little time for contemplation of past or future misdeeds.

Let us not imagine that the proposal for this girls' school was received enthusiastically by everyone for a Mr. S. G. Howe, former superintendent of the House of Reformation strenuously opposed the bill. In a letter to the Commissioner of Massachusetts for the State Reform School for Girls, he ways,

> "There is an instinctive shudder at the thought of bringing together, under one roof, or into one establishment two or three hundred unchaste or unchastely disposed girls, and reflection shows that the instinct is a true one. Such an establishment would be wrong in principle, because it would be upon the plan of congregation and approximation of viscious material, whereas the true principle requires its separation and diffusion." [2]

1 "Mass. System of Caring for State Wards", p. 60

2 Howe: "A Letter to the Commissioner of Mass. for the State Reform School for Girls," p. 3.

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1 "Mass. System of Caring for State Wards", p. 80

2 Howe: "A Letter to the Commissioner of Mass. for the State Reform School for Girls," p. 3.

Fortunately things have resulted more happily than Mr. Howe predicted.

In the place of the proposed school Mr. Howe suggested a temporary home where the girls would be kept but a short time, until places in families could br found for them, and pay these families $50 if necessary in order that the girl be trained properly.

4. The Industrial School for Boys: The need for this school was apparent in 1859 when the Nautical Branch of the Reform School was founded to care for boys from 14 to 18 years of age who had been delinquent. As we have already mentioned, it was abolished in 1872 making it necessary to raise the age limit at Lyman School from sixteen to seventeen years. With the creation of the Industrial School at Shirley in 1908 it was made possible for the Lyman School to care for boys under fifteen years of age, and the new school would handle those from fifteen to eighteen years. It took almost fifty years to establish an institution the need of which was so apparent for such a long period.

Feeling that a good start was necessary the school accepted only one hundred boys that first season. In this way the school created a spirit of its own. It "would have been ideal to have opened the school with but a few selected boys, without previous court records and to have added to these gradually, and slowly, but a legislative statute permitted transfers."[1] Now the school has a capacity for 319 boys who live in 10 cottages. Like Lyman School, "its primary function is to repair fractured character and to make from the material sent, in the first instance, useful self respecting and industrious citizens who will respect and obey other laws than those of their own volition."[2]

1 First Annual Report of Trustees of Industrial School for Boys, p. 11.

2 Ibid., p. 13.

In this chapter we have studied the development of institutions for juveniles. We started with the first institution, considered those outside of Massachusetts. Lyman School was definitely a result of the inability of the House of Reformation and the Boston Farm and Trade School to care for the juvenile offenders. While it did not at the start show any more solicitude for the children than had previously been expressed, however it did grow until it was able to offer a corrective program of activities for the boys after having determined the causes of their maladjustment. One of the most important things that Lyman School gave to the progress of treatment of delinquents was itself to act as an argument for the establishment of a similiar school for girls.

We consider the establishment of the Industrial School for Girls to be the start of the third or modern period in the progress of juvenile treatment. We use this as the starting point because previously there had been no individualization of treatment. Here originated the family or cottage system which is now used almost exclusively in juvenile institutions. It was adopted a few years later at Lyman School and used from the start at the Industrial School for Boys. The training schools did much to further the idea that children differ from adults and many of the laws relating to juvenile procedures in court have been brought about through experiences in the wisdom of kind treatment.

Chapter IV

Development of Provisions for Juvenile Procedures

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> A. Basis for Juvenile Approach--"It is believed that juveniles should be examined as privately as possible, consistent with the protection of their rights and to obtain the necessary evidence. The magistrates to consist of humane and discreet men, selected expressly for this particular duty and who shall act in the character of physicians rather than judges, and to determine whether the juvenile requires to be sent to the school or moral hospital provided for them, to be healed and restored to moral health, and if so, to direct that they be transferred accordingly; but they should not be branded or recorded as convicts to depress their spirits or be taunted." 1

We present this lengthy quotation of Colonel Fay, the "father" of the Industrial School for Girls because it shows that in 1850 there were agitators for a juvenile Court and because it expresses so aptly the ideas of the juvenile approach. While Colonel Fay and others would have been overjoyed to infect into our laws something of the present juvenile standards, it required years for this to be achieved and our state laws regarding delinquent children were rather a patch work affair until 1906.

Massachusetts had early training schools, founded probation, had state agents in 1870, had trials "separate and apart from the ordinary and usual criminal trials and business" in 1874 yet was either too backward or conservative to form a Juvenile Court or enact progressive measures on a large scale until 1906. As we read along in our history of children's laws we can not help but wonder at this fact since this need had been reiterated by thoughtful men and should have been apparent to all legislators. Nevertheless Massachusetts did follow the lead of her younger sister states and gave heed to the pleadings and arguments of Judge Ben Lindsey.

1 Paper given by Francis B. Fay. "The True Principles of Legislation in Respect to Vagrant and Criminal Children" at 2nd convention of Managers and Superintendents of Houses of Refuge, 1860, p. 136.

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Judge Lindsey of the Juvenile Court of Denver, Colorado and others of the same ideals, stumped the country to make known the idea of individualization in the study and treatment of delinquents. He believed juvenile delinquency to be not criminality but "a condition into which the child enters innocently or purposely, but which, if continued in, may make the child a criminal or otherwise bring evil into his life."[1] The boys in congested industrial areas were pictured by the Judge as "the most neglected creatures in the world receiving less attention than that given to live stock,"[2] and "the marvel is that they turn out as well as they do, that crime is not more prevalent than it is."[3]

Considerable emphasis was laid by this jurist on the duties and obligations of parents to care for their child. If they fail or shirk in this it then becomes the States' duty to care for and nuture the child, the parents having forfeited their right. We know that the State Parens Partriae is the higher and ultimate parent of all its dependents. We know too from history that the Courts of Chancery in England have exercised jurisdiction for the protection of the unfortunate child. It is through this reasoning and especially in this country through confirmation of the "parens patriae" power by the legislative to the courts. Having seen the need of care for delinquent, truant and neglected children and having this justification in law various states instituted courts to care for children as children and not as wrongdoers for whom the State demanded

1 Lindsey: The Juvenile Court Laws of the State of Colorado, p. 4.

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vindication regardless of their mental or moral maturity.

But the lofty ideals of Judge Lindsey were not approximated in any degree by children's laws of Massachusetts prior to 1906. The child who passed his seventh birthday was still considered as responsible for the commission of a crime as he would at twenty-seven; he was still complained of and tried in a criminal court (for the "juvenile session" is a session of a criminal court); he was "convicted" and "sentenced" as an adult would be, and if more than twelve years old might have been committed to an institution used mainly for adults. But we shall soon see how all of this was changed.

B. Organization of the Court--Much of the legal parlance of our Massachusetts laws was borrowed from the already existing Colorado Juvenile Delinquent Law and which was known to be functioning well. In 1905 Judge Lindsey was able to write about the operation of the Colorado Juvenile Delinquent Law, and of which the interpretative section reads:

> "This shall be liberally construed to the end that its purpose may be carried out, to wit, that the care, and custody and discipline of the child shall approximate as nearly as may be that which should be given by its parents, and that as far as practicable, any delinquent child shall be treated not as a criminal, but as misdirected and misguided, and needing aid, encouragement, help, and assistance." [1]

Then in 1906, the Massachusetts Legislature passed "An Act Relative to Delinquent Children,"[2] the second section of which is introductory, and its similiarity to the Colorado law just quoted makes it worthy of comparison.

1 Lindsey: op. cit., p. 25.

2 Acts and Resolves, 1906, 514.

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> "This act shall be liberally construed to the end that the care, custody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents, and that, as far as possible, they shall be treated not as criminals, but as children in need of aid, encouragement, and guidance. Proceedings against children under this Act shall not be deemed criminal proceedings." 1

This now stands as section 53 of chapter 119 of the General Laws. The meaning of the law has continued until this day although many question whether it has fulfilled its high promise.

Chapter 489, section 1 established "a court...in the cityof Boston to be known as the Boston Juvenile Court." This court may be said to be established as a District Court for handling the affairs of children for section 59 of the General Laws says it"shall have and exercise the same powers, duties and proceedure as District Courts," which is of course limited in Chapter 489, Acts of 1906 to cases which involve

> "the trial, sentencing, or committment or other disposition of a child under the age of seventeen years or in the receiving of complaints and the issuing of summons, warrants or other processes in relation thereto, or which relate to the care of neglected children"

This special court has jurisdiction extending only over municipal Boston. Juvenile offenders in the rest of Boston and throughout the state are handled by District Courts by means of juvenile sessions of these courts. Which brings to the fore the question raised by the children's Commission and many other groups. It is best phrased in the Commission's own words.

> "If the interests of the child and the interests of the public in relation to him because of his delinquency are more urgent in that small sector of the State, which is doubtful, to say the least, they certainly are not peculiar to it. The child whose delinquent act occurs in any other jurisdiction in the

1 Ibid., p. 413

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> State requires, in his own behalf and in behalf of the community's concern, a treatment of his case by a method not less painstaking not less expert than one who commits his misdeed on a Boston street, and, it may be, on a specified side of such street." 1

It might be well to describe briefly the Boston Juvenile Court for it is rapidly becoming an institution. The court has a full time judge, two special justices, and a clerk; four probation officers and several volunteers. The children who come before this court are able to be given attention which is more individualized because of its organizstion and small area than the other district Courts. For example the court has a project, the Citizenship Training Group to which all of the delinquents who are not committed to an institution are sent for a period of seven weeks training. After school hours, from four o'clock to six the boys are under the care of a psychologist who conducts discussions, gymn, and other activities all the while. Its socializing effects are yet to be determined but is the type of work we would be pleased to see conducted in all of the larger communities of our State. However District Courts do not usually have the time to do the intensive work required for our juvenile delinquents.

At one time the "justices of the peace designated to try juvenile offenders...exercised concurrent jurisdiction, duties, powers and authority in their respective counties with the judge of probate courts in all cases of juveniles under seventeen.[2] Judges of municipal, district and police courts might be so designated.[3] In 1877 this section was repealed

1 Children's Commission, p. 19.

2 Acts 1872, 258,2.

3 Ibid.

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1. Separate Sessions--We have already given instance of an expressed desire in 1859 before a Convention of Managers and Superintendents of Houses of Refuge.[3] Yet it was not until 1874 that the need for a definite jurisdictional changes in regard to the treatment of children became apparent enought that the legislature brought about the passage of such a bill. It provided that the city of Boston set aside some convenient place "separate and apart from the ordinary and usual criminal trials and business of the courts" for the trial of juvenile offenders, and the commitment of the insane and that a trial justice be there in attendance at 10.00 A.M. daily for these purposes. Provision was also made for similiar courts through out the districts of Suffolk County and times and places specified.[4] Later in 1877 the power of jurisdiction over children was extended to include police, district, and municipal courts. But now that clause regarding the commitment of the insane had dropped out of the

1 Acts of 1877, 211, 6.

2 General Laws 119, 52.

3 Fay: op. cit.

4 Acts of 1874, 258, 3 and 4

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1 Acts of 1877, 211, 6.

2 General Laws 119, 82.

3 Fay: op. cit.

4 Acts of 1874, 238, 3 and 4

law and attention was centered on the juvenile offenders. Not only in 1877 was provided the "session for juvenile offenders"but also separate records and dockets were ordered by law to be kept.[1]

Just as the development of our institutions did much to foster the idea that children differ from adults so also did the gradual growth of the juvenile court idea have much the same effect. It seems to us to be of significance that in Boston in 1877 we had functioning a court with fuvenile sessions, separate records and dockets. This was twenty-two years before we had a juvenile court, as such, anywhere in the country. Its effect upon subsequent development cannot be estimated but we can admire Boston for her pioneering step. Here we see another regrettable instance of the slowness of Massachusetts' progress--the cause of which is directly traceable to this state's heritage, her former ideas on punishing offenders regardless of who they were, and her conservative nature of being afraid to make a mistake.

Sessions for juvenile offenders and separate records proved to be cornerstones of the Boston Juvenile Court and for the future philosophy concerning delinquents. The court action is not for the trial of the child charged with crime, but is mercifully to save it from such an ordeal, with the prison and the penitentiary in its wake. It is especially through these laws that the court can deal with delinquents as children instead of first stigmatizing them and then trying to reform them. Except for a more concise wording in 1882[2] and another in 1902[3], no reference

1 Acts 1877, 210, 5.

2 Acts 1822, 89, 19.

3 Acts 1902, 86, 16.

1 Acts 1877, 210, 6.

2 Acts 1822, 89, 19.

3 Acts 1902, 88, 16.

is made to the subject of separate until 1906 when the Boston Juvenile Court was created. As we have already mentioned in 1906 the situation was such that separate sessions for juvenile offenders must be held, presided over by either trial justice or any police, district, or municipal court. The idea of treatment has developed until it is not confined to the word of law. For instance Chapter 489, section 5, requires that "so far as possible the court shall hear all cases in chambers not used for court trials," and also,"all persons whose presence, in the opinion of the court, is not necessary shall be excluded from the room," and Chapter 413, section 6 widens the jurisdiction of the court by including wayward and delinquent children as well as actual offenders. Again the "hearing of cases" as used in this law in place of the "trial of cases" of 1882 is not merely an instance of substituting one synonym for another. Rather it is another indication of the realization that children must be dealt with in a manner differing from that of adults. This phraseology bringing home the necessity of having our laws being written correctly and it should also make us think for a moment of the years of labor of some men to make a constructive change in the law but which is appreciated by few people. As an additional means of assisting these children it is also provided in the law of 1906 that no disposition or evidence produced in such hearings shall be used against the child in subsequent court proceedings other than criminal ones[1]--a law which has remained unaltered even in wording to the present day.

1 Acts 1906, 413, 6 and 10; 489, 5.

[1] Acts 1906, 413, 8 and 10; 488, 5.

Since 1906 there has been little legislation regarding separate sessions. Ten years later in 1916 the separation of juvenile proceedings was made somewhat more specific in this manner "said session shall be separate from that of the trial of criminal cases, shall not be held in conjunction with other business of the court, and shall not be held in conjunction with other business of the court, and shall be held in rooms not used for criminal trials."[1] Then in 1931 this was repeated almost verbatim but the age limit was changed, "case of children under seventeen years of age."[2]

While the separate session is indeed of vital importance in the distinction between juvenile and adult offenders, in actual practice it can and sometimes does fail to treat them much differently. We mean specifically the manner in which children are questioned and grilled in some of our District Courts.

2. Bringing children into court- Let us now consider the proceedure for bringing a child before the court. In 1860 two laws were passed pertaining to the Lyman School for boys and the State Industrial School for girls. It was stated in them that when a child(boy under sixteen, girl under 16 and over 7) was brought before a judge on complaint of some offence, a summons should be issued to the father "if he is living and resident within the place where the child is found," if not to the mother guardian, or person with whom the child resided. A representative would be appointed by the judge to act in the child's behalf if his parents were dead of not residents. The duty of this representative was to "show cause if any there be why said child shall not be committed to said institution."[3]

1 Acts 1916, 243, 2.

2 Acts 1931, 217.

3 Acts 1860, 75, 6; 76, 17.

Since 1908 there has been little legislation regarding separate sessions. Ten years later in 1918 the separation of juvenile proceedings was made somewhat more specific in this manner "said session shall be separate from that of the trial of criminal cases, shall not be held in conjunction with other business of the court, and shall not be held in conjunction with other business of the court, and shall be held in room not used for criminal trials." [1] Then in 1921 this was repeated almost verbatim but the age limit was changed, "cases of children under seventeen years of age." [2]

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1 Acts 1918, 285, 2.

2 Acts 1921, 217.

3 Acts 1880, 75, 8; 76, 17.

The idea that the child was a ward of the State had not yet developed, and is clearly evidenced in the above quotation. The training schools were still looked upon as something reprehensible, the child's representative having the duty of a "devil's advocate" to show reason why the child should not be committed.

Then years later it was legislated that if a boy or girl, brought before a trial justice, police or municipal court, was discovered to be under sixteen; he or she should be turned over to the judge of the probate court, "who shall have jurisdiction in like manner as if originally brought before him."[1] And a short clause at the end of this law mentions that complaints heard and determined apart from other criminal proceedings. It was by this same chapter that the visiting agent recently created could be called. In 1871 the child was still being brought to court by a warrant as is indicated by a law amending the 1870 version, "police, district and municipal courts and trial justices may issue warrants against persons under seventeen."[2] Note, however, that the age limit determining what constituted a child has been raised a year.

In 1882 we find this law,

> "Upon complaint so made to any court against any boy or girl between seven and seventeen for any offence not punishable by death or life imprisonment, such court shall examine on oath the complainant and the witnesses produced by him; shall reduce the complaint to writing...and may issue a

1 Acts 1870, 359, 7.

2 Acts 1871, 365.

warrant reciting the substance of the accusation and requiring the officer to whom it is directed forthwith to take the person accused and bring him or her before said court to be dealt with according to law." [1]

Although "sessions separate and apart" and adult representation were in order there was nevertheless little distinction made for children as is evident from this above law. Yet in the same year there was a provision for children under twelve which stated that in the first instance a summons shall be issued, and only "if said child fails then and there to appear" shall recourse be made to a warrant. [2]

By 1893 there was a movement to extend the practice of issuing summons first and warrants as a last resort, which would include all children under seventeen, unless the court had reason to believe they wouldn't come. It was not until 1906 at the general revision of our children's laws that the age limit was raised to fourteen years, and a atatement was made that such a summons shall be issued to all court, there is reason to believe that he or she will not appear upon a summons." The law has remained thus since that time and is a valuable improvement since it saves many children from detention over night in jail.

3. Detention: One of the most serious conditions which faced the legislature in 1905 was that of the detention of juvenile offenders prior to their hearing. Today, also, we should give it serious consideration if we take into account current reports on the situation. But let us start our investigation back in the days when children were

1 Acts of 1882, 89, 18.

2 Acts 1882, 127, 3.

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incarcerated with adults in common places of detention. The first official cognisence of this deplorable condition was in 1865 when the legislature ruled that "no person under the age of ten years shall be sentenced to a jail or house of correction except for non-payment of fine, or fine and costs."[1] This was a step in the right direction but the children under ten who came from courts are in a minority and in so many other ways the child offender under and above ten was considered much like an adult criminal, that if unable to pay a fine or court costs, he might be jailed or sentenced to a house of correction. Without reference to any particular age limits, the Acts of 1870 provided that:

> "a child arrested on any complaint...may be held or committed to jail by the officer having such child in custody, until the time appointed for trial, unless admitted to bail.." [2]

While the judges had the opportunity to admit bail, there was however little opportunity to dispose of a child, of any age, except by jailing him or her.

In 1882 the earlier laws were modified in two ways, with regard to place of detention, both before trial and after findings of guilt. Twelve became the minimum age for committment to jail or house of correction, and default of bail or non payment of fine or fine and costs, was no longer recognized as ground for making exceptions.[3] The second change was that any child of twelve held for a trial or examination and

1 Acts 1865, 208, 1.

2 Acts 1870, 359, 9.

3 Acts 1882, 127, 1.

unable to furnish bail might be given in custody to the State Board of Health, Lunacy and Charity (now the Department of Public Welfare) which was to care for the child in the interim and provide for its appearance at the trial.[1]

Although the very young child was now being treated in a reasonable manner, children over twelve years of age "arrested on any complaint.. may be held or committed to jail by the officer having said child in custody, until the time appointed for the trial unless admitted to bail...and the judge of probate as well as magistrate...may admit to bail."[2] The following section referred to the place of detention both before and after trial, and reads:

> "A child under twelve shall not be committed to a jail or house of correction, to the state farm or to the house of correction at Deer Island in the City of Boston, in default of bail, or for the nonpayment of a fine, or upon conviction of any offence not punishable by death or life imprisonment." [3]

During the same year this section was amended by the legislature providing that children might not be committed to a plice station any more than to a jail, house of correction, etc., and that these commitments were prohibited, prior to examination, in case of default of bail, etc.[4]

Let us see then, what would happen if a child under twelve were arrested, the offence not being punishable by death or life imprisonment. If the child were admitted to bail but unable to furnish it, he was

1 Acts 1882, 127, 2.

2 R. L. 86, 18.

3 R. L. 86, 20.

4 Acts 1902, 314, 1.

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In 1906 the legislation on this subject was modified further, the principle change being the elevation of the age level to fourteen years. The law now reads:

> "A child under fourteen years of age shall not be committed to a lock up police station, house of detention, or to a jail or house of correction, to the state farm, or to..Deer Island in the City of Boston, pending an examination, in default of bail, or for the nonpayment of a fine...or upon conviction of any offence not punishable by death or imprisonment for life: provided, that a boy twelve years or over, arrested in the act of violating a law of the Commonwealth, or on a warrant, may, in the discretion of the arresting officer, be committed to a lockup, police station, or house of detention." 1

The discretion of the arresting officer would certainly vary with each man and be a rather wide authority. How to explain it is done by Judge Lindsey when attacking the unsegregated common confinement of arrested persons of all ages. He said,

> "The history of crime and of penal institutions is full of evidence of the evil effect of subjecting unformed characters to criminal influences by placing boys or young men in daily contact with hardened criminals, inmates of jails and penetentiaries..it is almost equivalent to condeming them to a life

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Children under fourteen admitted to, but unable to provide bail were committed to the care of the "State Board of Charity or of a probation"[2] pending examination or trial. For the child over fourteen who was unble to supply bail, committment was at the judge's discretion, to a probation officer or to jail.[3]

Just before the law was changed in this regard, there were in the year ending Sept. 30, 1905 three hundred and seventy-two committments of juvenile offenders (between twelve and seventeen) to the Suffolk County Jail, and twenty-two others to the House of Correction at Deer Island--a total of 394 for the county! Twenty of these were but twelve years of age, forty were but thirteen, 87 were but fourteen, ninety-one were fifteen, and 156 were sixteen.[4] But the law governing the trial of children was partly responsible for this evil. It required that a state agent attend the trial and care for the children's interests. Due to the number of cases which the agents attended that year, 4249 in number, the cases often had to be continued until the agent could be present.

In 1906 for a limited jurisdiction and then in 1918 throughout the state was instituted an interesting arrangement having in mind the reduction of cases of incarceration of children. The officer serving the warrant, in warrant cases, or making the initial arrest in such cases, was

1 Lindsey: op. cit., p. 12.

2 Acts 1906, 413, 5.

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4 Perkins: The Treatment of Delinquent Children, p. 10.

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2 Acts 1906, 413, 5.

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permitted to "accept the written promise of the parent, guardian, or person with whom it was stated that said child resided, or any other reputable person, to be responsible for the correctly timed court appearance of the child in question."[1]

In considering the detention situation as it was and as it developed we see a marked improvement. Originally children had been detained in ordinary jails prior to trial just as they had been incarcerated afterwards for punishment. It required many years however. After jail commitment was frowned upon for anything to be accomplished to alleviate the situation. While as early as 1826 and 1846 when the people began to realize the evils of jail commitment those same evils were not noticed in jail detention until 1865. We feel that lag is typical of the development of most of our delinquency laws. It is to be noticed that there was no apprecaition of this situation until the modern era of development in delinquency laws. Then it was not until 1906 when the evils were recognized, although previously the minimum jail detention age was ten, and later twelve years.

By a statute of 1931 the court, before committing a child over fourteen, unable to furnish bail, to the temporary care of the Dept. of Public Welfare, was required first to obtain the consent of said department. If its consent were not obtained, the child could be committed to the care of a probation officer.[2] It is the practice now of the Boston Juvenile Court to have a probation officer on call at night in the event that a

1 Acts 1906, 489, 7.

2 Acts 1931, 216.

1 Acts 1906, 489, V.

2 Acts 1921, 218.

child be arrested. The police officer turns the child over to the probation officer who the puts the child in a temporary home maintained by the court. The child's case is usually heard on the next day. This method is used in Boston because most of the children arrested are released to their and appear in court the next day for their trial. The children who require this temporary placing are not numerous enough to erect a detention home.

Those children who were held in jail pending examination that is those whom a judge thought might not otherwise appear at court as directed, were required to be returned to the court "within three days after each commitment, and not more than ten days were to elapse after the original commitment "before disposition of such case by the court, by adjudication or otherwise. "While confined, as under this section, any child was to be

> "kept in a place separate and apart from all other persons committed thereto, who are seventeen years of age or over an d shall not at any time be permitted to associate or communicate with any other such persons committed as aforesaid, except when attending religious services or receiving medical treatment." 1

An amendment in 1931 to lengthen the time before obligatory reappearance in court to ten days instead of three, and double the time from ten to twenty days, before mandatory final disposition by the court.[2]

4. Trial Proceedings: We have had by necessity to refer from time to time in our study thus far to trial proceedures, therefore we shall not have to go into detail regarding the attitudes expressed toward juveniles who come into conflict with the law. We will urge in this paragraph as we will again that more Juvenile Courts be established through

1 Acts 1927, 221, 1.

2 Acts 1931, 284, 1.

the state. Citing instances of a few district courts which had reached a high standard is not an argument against them, such courts are merely exceptions. The personnel in these courts is not apt to have the training and viewpoints of one who is devoting a lifetime to the "aid, encouragement and guidance" of juvenile delinquents. Our district courts devote one day a week usually to juveniles, and the judge and probation officers who work almost exclusively with adults are apt to be out of touch with the techniques and proceedures that should be used and unconsciously treat the juveniles as adults.

We are told that Massachusetts has not yet escaped from the attitude expressed in the legislation of 1859 and 1872 which allowed that boys could be subject to "such other punishment as is provided for the offence "besides commitment to the Reform Schools. For while the introduction to the delinquency laws of 1906 speak of the delinquent as being in need of "aid, encouragement and guidance," the law later says:

> "If it shall be alleged in a complaint under this law that a boy or girl has committed an offence against a law of the Commonwealth, or has violated a city ordinance, or a town by-law, and the court shall be of the opinion that his or her welfare and the interests of the public require that he or she should be tried for such offence or violation, instead of being dealt with as a delinquent child the court may, after a hearing on said complaint, order that it be dismissed. Criminal proceedings shall not be begun against any child between the ages of seven and fourteen, except for any offence punishable by death or imprisonment for life, unless proceedings against it as a delinquent child have been begun and dismissed." 1

While some argue that these criminal implications should be eliminated we feel however that it is important to have the law remain as it is at

1 Acts 1906, 413, 11.

present. Now the age range has been widened making it cover the period from seven to seventeen years of age.[1] We are all aware of the fact that there are juvenile offenders who are as vicious as adult criminals and who may never be reformed. We have seen instances of a youth of fifteen or sixteen yea s arrested by an officer only to snarl, "If I had a chance to use this gun on you, I wouldn't be caught." Or the girl of fifteen who has been leading such an immoral life that she would surely corrupt children of the same age. It is for cases like these that we must have teeth in our laws, which may be bared when necessary. It seems a reflection on justice to have these ruthless youngsters who have committed major crimes and endangered the lives of honest men and women treated as though they were little innocents. Perhaps some one reading this will remark that the writer has not yet left the old ideas of treating children as adults behind him. But the writer feels that he is keeping in mind the idea of individualization in delinquency and that some of these boys and girls must be treated in manner different from the usual course.

5. Probation: Good probation work is proving to be one of the best methods of reforming delinquents and also an excellent means of organizing preventive work in this field. It was early realized that the abnormal contacts of the court with the offender had relatively little and insufficient date to understand the case and dispose of it properly. This feeling was expressed in 1857 when Colonel Francis B. Fay stated,

1 Acts 1933, 196, 1.

1 Note 1933, 195, 1.

> "If one has committed a theft is there any examination into his history, inquiry whether he was suffering from cold or hunger at the time, or whether in childhood he was taught to steal; whether he grew up, poor, ignorant, neglected, abused, witnessing only scenes of vices, habitually exposed to corrupting influences, and thus acquired no rational, moral perception, no conception of law or crime." 1

Let us not forge t that these advanced attitudes were being expressed almost 20 years before Massachusetts enacted her first probation law--the first in the country.

While it was not until 1878 that provision was made for paid probation officers, the practice of probation had long been established. In 1852 John Augustus wrote an account of the philanthropic work he had been doing for the past years.[2] This good man attended the Police Court and Municipal Court sessions and often stood bail for persons whom he thought might under guidance be reformed. Most of his work was with young people and inebriates, becoming with the judges an unofficial advisor. Due to his remarked insight young people were placed in his charge, and to judge by his accounts many developed into good citizens. In one year he made 1500 calls and received more than that numberat his home. In that same year the amount of his bonds was $13,020, having bailed 133.

Even before the time of John Augustus we are told Massachusetts made use of a probationary system. It started with a "benefit of clergy" whereby at first, the clergy were exempted from punishment for a misdeed in a manner similiar to probation. This is a carry over from England,

1 Fay: "The True Principles of Legislation in Respect to Vagrant and Criminal Children," p. 134.

2 John Augustus: A Report of the Labors of John Augustus for the Last Ten years in Aid of the Unfortunate,"

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gradually became more inclusive, providing for anyone who approximated a cleric, e.g. in the ability to read.[1] This was repealed in 1785, and rightly so since it was founded on injustice and superstition. Yet it is through this practise that F.W. Grinnell in his paper "Probation as an Orthodox Common Law Practice in Massachusetts Prior to the Statutory System" sees a start of the probation plan.

The initial step in this direction was the passage of the visiting agent law, in 1869. This first law required that on the arrest of a child, an prior to trial, the visiting agent be notified of the pending criminal action, so that he might have time to investigate the several cases and then attend the trial, either in person or by deputy, to protect the interests of the child.[2]

It was under this same act that developed in time what became known as the Division of Child Guardianship. The ten State Board of Charities was given power to place the child brought before the court in private homes, or in any of the state reformatories. In much the same manner as is done today the visiting agents sought out and investigated suitable homes. Placement which was for a period equal to all or part of the remainder of the child's minority at the discretion of the Board of Charities.[3] Strangely enough, however, the agents were not notified of children's case appearing before the Superior Court.

Legislation of 1870(Chapter 359, section 8 and 10), 1876(Chapter 131, section 2), 1882 (Chapter 89, section 22 and 50) and 1883(Chapter 110)

1 Grinnell: "Probation as an Orthodox Common Law Practice in Massachusetts Prior to the Statutory System," p. 570ff.

2 Acts 1869, 453, 4.

3 Ibid.

elaborated on the duties of the visiting agent and on the authority of the Board of Charities over an alleged delinquent when brought to court.

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The duties of the probation officer with juveniles was made definite by law in 1906.

> "Every case of a wayward child or a delinquent child shall be investigated by a probation officer who shall make a report regarding the character of such child, his school record, his home, his surroundings, and the previous complaints, if any. He shall be present in the court at the time of the trial and furnish the court with such information and assistance as shall be required. At the end of the probation period of a child that has been placed on probation, the officer in whose care it has been shall make a report as to its conduct during such period."

In this form the law has remained to the present time and was only at that time in 1902 that supvision of probation work among wayward and delinquent children was removed from the State Board of Charity.[1]

1 Acts 1912, 187, 1.

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In this form the law has remained to the present time and was only at that time in 1906 that supervision of probation work among wayward and delinquent children was removed from the State Board of Charity.

1 Acts 1906, 187, I.

Withe the establishment of the commission on probation, this authority too, was transferred to the new commission. This department now known as the Board of Probation keeps a record of each time a person has been before a court, the disposition, etc., of his cast. It has often been suggested that this Board be given the authority to supervise the work of the probation officers throughout the state. This would be excellent and we feel it would also be well if this Board had the power to conduct competitive examinations for these positions to help the judges select their men.

In order that the probation officer may secure the true picture of the case he often must learn of the child's behavior in school. For this reason data "relating to the attendance, conduct, or standing of any pupil" for the use of the judgr or probation officer is mandatorily furnished, upon the court's request, of the "Superintendent of Boston Public Scholls, and of any private school and of the teachers therein "provided said pupil is at the time under the charge of the court..." [1] Then in 1918 this law was further extended to include "all the courts and schools within the Commonwealth."

In this chapter on probation we have traced it from its source to the present day practice. We have seen how some men felt about the treatmont of juveniles and how Colonel Fay and John Augustus did their part. They recognized that although the State had a training school for boys it wasn't sufficient. The importance of this unofficial work cannot be overestimated for it is both the cause and the foundation of our

1 Acts 1906, 489, 8.

[1] Acts 1909, 489, S.

present system. With the advent of the state's visiting agent in 1869 children now could be given another chance before commitment and receive helpful training from the state agent. The visiting agent law paved the way for the establishment of probation in 1878-80 for probation was then being generally practiced and its need was apparent. Following this little impetus was given to probation in general or in particular for juveniles until 1906 when the whole nation was awaked by Judge Lindsey and when Massachusetts established its juvenile court law.

6. Disposition: Prior to the establishment of the Reform School in 1847 and for a period thereafter, there no distinction in the commitment of a child or adult. "All through the Middle Ages, true to the general tendency in the criminal law of the time, offending children were treated with great severity which reached its climax in the seventeenth and eighteenth century. A child of eight years, who had with "malice revenge, craft and cunning" set fire to a barn, was convicted of a felony and duly hanged. One boy of ten who confessed to have murdered his bed fellow, was condemned to death and "all the judges agreed to the imposition of this penalty because the sparing of this boy simply on accoutn of his tender years might be of dangerous consequences to the public by propagating a notion that children might commit such atrocious crimes with impunity,"[1] In fact we find in 1847, a law which indicates the reluctance with which the old philosophy and practices were abandoned.

1 Lou:"Juvenile Courts in the United States," p. 14.

6. Dispositions: Prior to the establishment of the Reform School in 1847 and for a period thereafter, there no distinction in the commitment of a child or adult. "All through the Middle Ages, true to the general tendency in the criminal law of the time, offending children were treated with great severity which reached its climax in the seventeenth and eighteenth century. A child of eight years, who had with "malice revenge, craft and cunning" set fire to a barn, was convicted of a felony and duly hanged. One boy of ten who confessed to have murdered his bed fellow, was condemned to death and "all the judges agreed to the imposition of this penalty because the sparing of this boy simply on account of his tender years might be of dangerous consequences to the public by propagating a notion that children might commit such atrocious crimes with impunity." In fact we find in 1847, a law which indicates the reluctance with which the old philosophy and practices were abandoned.

1 Lou:"Juvenile Courts in the United States," p. 14.

> "The court may at its discretion, sentence a boy to the State Reform School, or to such punishment as is now provided by law for the same offence. And if the sentence shall be to the Reform School, then it shall be in the alternative to the State Reform School, or to such punishment as would have been awarded if this act had not been passed." 1

We should notice the harshness of this alternative for at this time there were only three possible dispositions for the juvenile offender; namely, sentence to an adult prison(such punishment as would have been awarded) fine, or commitment to the Reform School. In the next ten years the school grew in favor of the judges to the extent that in 1859 commitment was considered worthy of a whole section in the law. This section provided that actual commitment should be made through the probate court to which other judges would turn over those boys whom they considered suitable subjects.[2] In a separate section the alternative was set forth. The judge could if he considered the child unfit for the Reform School sentence him as an adult with the right to appeal or bind him over to appear in Superior Court. This required a separate law for disposition from the Superior Court.[3] It allowed the court the same choice between adult sentence or Reform School, commitment, as previously provided, but added the restrictions that no boy over fourteen should be committed to the school, all commitments were for minority and no sentence could be alternative for commitment.[4]

1 Acts 1847, 165, 4.

2 Acts 1859, 286, 1.

3 Acts 1859, 286, 3.

4 Acts 1859, 286, 4.

Then in 1855, the law establishing the Girls Reform School made provision for commitment here "in case it shall be proved to the satisfaction of the judge that the girl is a suitable subject."[1]

It was at this time, 1859, that the School Ship was established and commitment ages had to be changed. Boys below fourteen could go either here or to the original school; those above fourteen could go only to the School Ship. But in either case "such punishment as is otherwise provided" was permitted.[2] In spite of all the agitation in these days for a juvenile approach on the part of such men as Theodore Lyman, Col. Francis Fay, and Mr. B.K. Pierce each year legislators fearing the effect of too great leniency upon youth, had this clause inserted in the General Statutes:

> "Nothing in the General Statutes shall prevent the court from sentencing fuvenile convicts to confinement in any place in which they may be by law confined."[3]

We did not yet have the visiting agent law and the practice of summoning parents and guardians to court had only just begun, so perhaps this was concession enough for the children. This clause is indicative of what some term a timid advancement of legislation and what others describe as cautious and deliberate.

1 Acts,1855, 442, 4.

2 Acts 1860, 76, 26.

3 Acts 1860, 174, 15.

In the laws providing for commitment to the various schools an interesting clause is used: "if it appears that the child is a suitable subject for said institution, and that his moral welfare and the good of society require that he should be sent thereto for instruction employment, and reformation."[1] The only part of this phrase lacking in today's laws "reformation" which has been changed to "training." This is not any play on words, it carries another idea entirely, an idea embodying a deeper understanding of and solicitude for the needs of children.

One of the most significant advances in the treatment of juvenile delinquents was made in 1869. Part of the law made at this time is as follows:

> "If it shall appear to the said magistrate that the interests of the child will be promoted by placing him in a suitable family, he may, instead of committing him to a reformatory, authorize the board of state charities to indenture the child during the whole or a portion of his minority, or to place him in such family." [2]

This was splendid for not all juvenile offenders who require training should be placed in training schools. The courts were now taking advantage of the foster homes which under the state board of charities had been secured. In the following year the law was slightly revised when the state board was authorized to place the child in charge of any person, or in the State Primary School,[3] and in 1871, the sixteen year limit was raised to seventeen, and a clause added that if the child

1 Acts 1860, 75, 7.

2 Acts 1860, 75, 7.

3 Acts 1870, 359, 10.

proved unmanageable, he might be transferred to the reform, nautical, or industrial schools.[1]

Two laws subsequent to this legislation have greatly added to its effecient execution. The state board of health, lunacy, and charity to which the court now turned over some of its delinquents was divided in 1886 into the state board of health, and state board of lunacy and charity.[2] Later in 1898 the board of lunacy and charity was divided into two separate departments.[3] This left the delinquents in the charge of the state board of charity, a more manageable department, freed from such diversified duties, and now more able to serve the children.

Emily Balch writing in 1895, lists the possible dispositions for juvenile offenders as follows:

1. Fine
2. Adult prisons and jails
3. County Training Schools
4. Reform Schools
5. Commitment to State Board of Charity
6. Probation
   at home
   away from home. [4]

If we consider these in groups of two we have a good conception of the three step progression of disposition for juveniles. But for a slight overlapping they fit into the chronological division made in the introduction. Sentences to prisons, and fines are typical of the treatment of juveniles in the Colonial period when no distinctionswere

1 Acts 1871, 365.

2 Acts 1886, 106, 4.

3 Acts 1898

4 Emily Balch: "Manual for Juvenile Offenders in Massachusetts."

made regarding age. The training and reform schools as we mentioned previously are bases upon which the philosophy of the transitional period developed. And finally probation and placement in foster homes are modern innovations and belong to this era of kinder treatment for delinquents.

With the establishment of the Juvenile Court and its accompanying laws this progression reaches a climax. By this law a child is adjudged wayward or delinquent. The wayward child is placed in the charge of a probation officer; the delinquent may merit any of the laternatives of Miss Halch but the second, depending on his particular case. Usually it is probation and with a failure to improve under this procedure will come the stricter methods. Where there is a provision made that, in case the misdemeanor committed involved civil infury to some person, the child while on probation will make restitution himself. Not until 1931 however, do we find the word "sentenced" being replaced by "committed."

7 Appeals:

> "Any girl who shall be ordered to be committed to said institution under the provisions of this act, may appeal from such order in the same manner and upon the same terms as is now provided in respect to appeals in criminal cases, and the appeal shall be entered, tried and finally determined in the court to which the same shall have been made in like manner as if it had originally commenced there." 1

This was in 1855, the law being extended to include the Reform School for Boys,[2] and the Nautical Branch when that was established. In the eighty-three years following that initial law very little change has been made in Massachusetts in this matter of appeal. Then in 1860 it was repeated in an abridged form, and in a combined "boy and girl" form in the Public Statutes of 1882, and the Revised Laws of 1902, but change was made. We cannot expect any change to have been made prior to 1906 for not until then did we have the acceptance of the presentphilosophy regarding juveniles.

1 Acts 1855, 442, 7.

2 Acts 1859, 286, 2.

It is argued by manyof our foremost social workers that since the spirit of the Juvenile Court Law is protection rather than vengeance for the child, any right of appeal will frustrate the purpose of the law and the wise finding of the judge will be ignored.

A recent study by Benedict S. Alper treats of this subject in which he points out the inconsistency of providing a child with a right to appeal from what has been deemed a wise and proper treatment, in a court where the emphasis is upon the child's future and not his punishment. He states:

> "There now stand upon the statute books of the Commonwealth two conflicting sections--one which states the purpose of the Juvenile Court to be paternal and benevolent--and the other which insists on giving the child two means of escape from this kindly treatment." 1

We feel that the situation of which Mr. Alper writes is not especially alarming. 415 appeals over a period of five years is too many, but it averages only nine a year for each district court. It seems quite natural to find nine dissatisfied out of the hundreds who come before the court yearly. We feel that problem and others would be solved by the establishment of several full-time juvenile courts. As Mr. Alper indicates but 1.2% of the appeals come from the Boston Juvenile Court. If the other courts were full time they might have the same low percentage.

It is not Mr. Alper's figures that form his best argument, rather is it the plea that appeal is ruinous to the paternal and benevolent purpose which the court should take. We have failed to see how it detracts from the Boston Juvenile Court's attitude which kindly informs the child of his rights and explains the advantages and disadvantages of either course.

1 Alper: "Juvenile Justice," p. 341.

D. Commitment: Commitment of a delinquent is to the State Reform School for Boys, the Industrial School for Girls and the Industrial School for Boys except in the case of a school offender who might be sent to one of the state institutions but not especially considering the legislation dealing with commitment. Let us do that.

In 1836 when we had no state-wide industrial schools, only the House of Reformation and the Boston Farm School, the legislature passed a law forbidding courtsto sentence boys under sixteen or "any female convict." to the state prison. This was in case the boys were first offenders and had a term not exceeding three years. Instead the commitment was to be to a county jail or house of correction--Boston making use, however, of its two specialized schools.[1] An encouraging beginning, this recognition of the evil effects of long term contacts with criminals upon the plastic mind of a child.

The year 1847 brought with it more protection for delinquent children for the State Reform School was created at this time. Boys under sixteen convicted of offences not punishable by death or life imprisonment could now be committed to this school at Westboro. Yet the best interests of the child was often impaired by the judge who in his discretionary power might prefer the usual sentence; and also by the child who prpvided with an alternative, after being committed to the Reform School could choose the more rigorous but shorter term at a House of Correction.[2] Nevertheless, the use of the Reform School did increase steadily as is

1 Acts 1836, 143, 18.

2 Acts 1847, 165, 4.

indicated in the annual reports. In 1898 and 1899 within a year of each other we find appropriations amounting to $46,000 for a new school building, workshop, laundry and kitchen. In addition the allowances for salaries, labor and expenses are found to grow larger each year.

The proceedure of commitment originated in 1855 with the law establishing the Industrial School of Girls. It was a specified form for the warrant for girls between seven and sicteen, but slight variations were not considered if it was quite apparent that the girl was committed. Together with this warrant, which was served by a constable, went a copy of the substance of the complaint and testimony which was given to the superintendent. The girl was to remain at the school until eighteen unless discharged for some reason.[1] If the girl had been previously brought before a judge, he might proceed with the trial and commitment without issuing any summons to her parent or guardian.[2]

Probate or insolvency courts were the only ones which could commit boys and girls to these reform institutions. Hence a child originally brought before some other justice, who was of the opinion that the child would be a good subject for the school, had to be transferred by warrant to a court from which he could be committed.[3] Accompanying the warrant of commitment was a certificate of residence,[4] and one of

1 Acts 1855, 442, 4 and 5.

2 Acts 1853, 442, 6.

3 Acts 1859, 286, 1.

4 Acts 1859, 286, 1.

age.[1] In 1859 the following phrase was added to the law: "together with such other particulars concerning the oby so sentenced as such magistrate may be able to ascertain."[2] All indicating a growing appreciation of the need of treatment for the child, this sharing of any information, and provided the superintendent with some point of departure for beginning his treatment of the child.

The founding of the School Ship in 1860 solved for a time the problem of the proper commitment of the older boy. Though unsuccessful and soon abandoned it was not an insignificant step towards the final establishment of the Industrial School for Boys. Abolition of the alternative sentence in 1959[3] meant that once a child was committed to a reform school or a branch thereof, he had no other choice. The very boys who most needed reform school training were those who evaded it through the alternative sentence. No longer was this possible and no longer had he the accompanying risk of learning more vice than he had ever known before.

Between the years of 1863 and 1908 by far the greater proportion of commitment legislation dealt with age. For a time after the establishment of the School Ship, boys under fourteen were committed Lyman School or to the School Ship on the opinion of the judge. There must have

1 Acts 1858, 25.

2 Acts 1859, 170, 3.

3 Acts 1859, 286, 4.

been dissatisfaction with this arrangement for in 1863 we find more definite limits. Boys from eleven to fourteen were sent to Lyman School and those from fourteen to eighteen to the School Ship.[1] Unfortunately as we already know this plan continued only until 1872. Then when the law was rewritten in 1872 all suitable boys from seven to seventeen could be admitted to Lyman.[2] This same year the admission for Lancaster was raised, so that the range for both boy's and girl's reform ran from seven to seventeen. This present arrangement lasted until 1884, when with the establishment of the State Reformatory a provision was made for sending any boy of fifteen years, there instead of Lyman School. While this naturally proved beneficial to the group at Lyman School and made them more manageable, so by the same token those boys of fifteen, sixteen and seventeen could not have gained much by their experience. Nothing was done about this situation until 1908 when an Industrial School for Boys was established to provide a suitable place of training for these boys between fifteen and eighteen.[3]

It is surprising to learn that not until the year 1899 was legal provision ma de for hospital care for the children in reform schools. The law then passed stated that children needing such care could be transferred to the state almshouse where they would receive it, and he returned when they recovered.[4]

1 Acts 1864, 202.

2 Acts 1872, 68, 5.

3 Acts 1908, 639, 3.

4 Acts 1899, 152, 2.

We have not only observed in our study thus far the gradual growth of the idea that children differ from adults, but also that children differ from children.(at least in the required method of handling if nothing else.) There is an awareness indicated at times by the shifting age groups that seven year-old groups require a different treatment than those of twelve; and twelve year-olds from those of eighteen. When this is completely realized and practiced then we will have a notable advance in the training of children. Of late there has been a growing practice of releasing the children in a shorter period of time, about nine months. This has come with an increased faith in probation-- a realization that any good to be accomplished during detention must be accomplished quickly or not at all, and that the true adjustment must be made in the community where the child is obliged to live.

E. Parental Responsibility: Recognized today by most people who have an interest in and knowledge of the subject is the fact that bad homes as resulting from parental conditions is the chief cause of juvenile delinquency. There have developed excellent laws regarding the relationship of the parent or guardian to the delinquent child and to the court. That there was such a relationship was not apparent until the act that established the State Reform School for Girls was passed and embodied in which act the judge or commissioner had the power to,

> "Summons, or order, in writing, addressed to the father of said girl..or to the mother..or if there be no father or mother of said girl resident within the town or city, then addressed to the legal guardian of said girl if any there be, and if not, to the person with whom, according to the examination of the girl...the said girl shall reside, the judge..may appoint some suitable person to act in her behalf, requiring him or her...to appear before him at such time and place as shall in said summons or order appoint, and to show cause if any there be, why the said girl shall

not be committed to the Reform School for Girls established by this act." 1

All the factors in the situation probably could be presented if there were some adult to do this, the child not having access, to or the ability to reconstruct the factors necessary. While this and the preservation of any reasons why the child should not be sent to the Reform School were the duties of the adult, it was nevertheless an excellent start since it envolved some responsibility on the part of the parent.

Reasons for apprehending a girl, and subsequently issuing such a summons or order to a parent or guardian, or other appointed adult, included the commission of"an offence punishable by fine or imprisonment other than imprisonment for life, or..the leading of an idle vagrant or viscious life, or..being found in any street, highway, or public place, in circumstances of want or suffering, or of neglect, exposure, or abandonment, or of beggary". 2 By section 17 of chapter 76 of the General Statutes (1860) it was arranged that parents, etc. of boys, too, could be summoned in like manner.

The laws of 1902 duplicate the phraseology referring to parental summonses, and in the same section, incorporate the idea of notifying the Board of Charity, so that its visiting agent may investigate and attend the trial.

Judge Lindsey, the great pioneer of the juvenile court movement, was militant for a law holding parents and other adults responsible for

1 Acts 1855, 442, 4.

2 General Statutes 75, 6.

the delinquency and dependency of children. Among those to come to his support was Judge Jacob Riis of New York saying:

> "You are altogether and everlastingly right. The child who gets yanked into court is a victim, not a criminal...The same thing that sent him adrift is the thing to hold responsible...Where the parents are at fault...or where it is any other guilty one, he should feel the responsibility." 1

And that is just what was done in Colorado. The adult delinquency law which was passed is worthy of repitition here:

> "In all cases where a child shall be a delinquent child... the parents or legal guardian, or person having the custody of such child, or any other person responsible for, or by any act encouraging, causing, or contributing to the delinquincy of such child, shall be guilty of a misdemeanor, and upon trial and conviction thereon, shall be fined in a sum not to exceed $1000, or be imprisoned in the county jail for a period not exceeding one year, or both such fine and imprisonment." 2

The excellence of this law was soon to be reflected in Massachusetts legislation. And although the delinquency law of 1906 did not itself improve the process of summonsing parents to any appreciable degree, a companion act provided that

> "if a boy or girl is adjudged to be a wayward child or a delinquent child...a parent of such child who is found to have been responsible for such waywardness or delinquency, shall be punished by a fine of not more than $50 or by imprisonment in jail for not more than six months." 3

It was not until 1931 that we had an amendment that required parents to come from anywhere within the Commonwealth to be present at their child's hearing.[4] There had previously been a provision that parents, or others

1 Lindsey: op. cit., p. 8.

2 Ibid., p. 18.

3 Acts 1906, 414, 13.

4 Acts 1931, 207.

who failed to appear in response to the type of summons provided for, might be confronted with "a capias to compel ~~that~~ the attendance of such person." The capias to be served in the same manner as one used "to compel the attendance of witnesses who have failed to appear on a subpoena issued in behalf of the Commonwealth in a criminal case."[1] While this was a progressive step the situation of the child apprehended outside the municipal limits of the town or city in which its parents or guardian resided, had no protection by this law. Only after a period of seventy-five years, in 1931, was there a change in this obviously weak law of summonsing parents only when they were "known to reside in the city or town where the child was found."

In 1916 the law relating to parental responsibility was strengthened when section 13 of chapter 414, of the acts of 1906 (already quoted) was eliminated and the following paragraph was substituted:

> "any parent or guardian or person having the custody, control of a wayward or delinquent child...who...had knowingly or wilfully encouraged, aided, caused, or abetted, or connived, or knowingly or wilfully done any act or acts to produce, promote, or contribute to the delinquency or waywardness of such child,...to be guilty of a misdemeanor and punishable by a fine of not more than $50 or by imprisonment for not more than six months." [2]

This law was excellent but not inclusive enough. Consider that for those other than the child's parents' or guardian who so often are the cause of the delinquency there was no charge on which to take them to court. All the while there was a statute in Colorado then about eighteen years old,

1 Acts 1907, 195, 2.

2 Acts 1916, 243.

which included any adult involved. Once again Massachusetts follows her more progressive sister state but this time not until 1932 when this statute was again revised. It now included any person who contributes to the waywardness or delinquency of a child.[1]

We do not need to call attention to the fact that nothing was done regarding parental responsibility until 1855, the beginning of the modern period of juvenile treatment. At this time the parent was summonsed to show reason why the child should not be committed. Another lowly start was to pave the way for real law but again in this case we are indebted to Judge Lindsey and Colorado for our present attitudes.

F. Parole: Children of the Reform School or Industrial Schools have always had their release in the hands of the board of trustees of the respective institutions. As we have previously mentioned, all children committed to these institutions were to be "there kept, disciplined, instructed, employed, and governed under the directionof the board (of trusttees) until ready for legal release."[2] Commitments of boys have always been"during minority,""while girls were committed until eighteen, but if she had no home to which she could return, she might be detained until she reached twenty-one."[3]

Four bases for discharge of boys were listed:

1. Arrival at the age of twenty-one
2. Being declared "reformed and discharged"

1 Acts 1932, 95.

2 Acts 1849, 165, 5.

3 Acts 1847, 165, 7.

3. Being bound out by the trustees
4. Being "remanded to prison...as incorrigeable"

Three reasons for release of girls from Lancaster:

1. Arrival at the age of eighteen.
2. Being "bound out by the trustees."
3. By being "otherwise legally discharged."

This"binding out" approximated parole which was to follow later. It meant placing the child in the home of a farmer or tradesman as a servant or apprentice. The person accepting the child was to report to the trustees in writing once in six months, to tell how the child was doing, where it was living, etc.[1] There children were usually released "by on reaching their majority, but might also be released "by reason of mental incapacity or bodily infirmity."

As far as Massachusetts legislation goes, the origin of our parole system, which is a system of discharging the boy or girl from the institution prior to their majority and of friendly guidance and instruction by a parole officer. The germain parts of which are found in Chapter 128 of the laws of 1895.

> "The trustees of Lyman and Industrial schools shall have the power to release on probation, and with or without indenture, to place any of the children in their custody in their usual homes, or in any situation or family which has been investigated and approved in a manner satisfactory to said trustees, and in accordance with the existing laws; and said trustees may employ agents for investigating places and for visiting children, shall furnish the state board of lunacy and charity with the name of each child so placed and the name and residence of the person to whose care such child is intrusted." 2

It was written at this time of the released boy's need,

1 Ibid.

2 Acts 1895, 128, 3.

> "A boy who goes from the school is suddenly at loose from the negative restraints as well as the positive helps of the school. He needs at this point to be very carefully watched and guarded by someone interested in his welfare and he needs consciously to feel this care." 1

Trustees have the power at any tim e prior to the expiration of the commitment to resume the personal care and possession of children released on probation...and may recall them to the school to which they were originally committed.[2] The trustees have also been instructed to give all due regard in placing opportunity to worship in their own belief.[3]

At the present time the parole division is part of the system of juvenile training which is under the Department of Public Welfare.

We must suggest in considering the work of these parole officers, rightly termed visitors and guardians to older boys or girls, that their staff be enlarged considerably in order that they might be able to work more intensively with the boys or girls under their care. In addition we feel that the system of having the released boy or girl remain a parolee until twenty-one is sometimes absurd and should be made more discretionary. Consider the length of time a boy of ten years who had been at Lyman School would have to be reporting to his guardian--and always during these eleven years is the possibility of being returned for some small infraction. Might it not be wiser to have the length of parole discretionary with the board of trustees for the younger boys, and keep the present rule for the older boys.

1 Worcester:"What is Lyman School for Boys," p. 10.

2 Acts 1895, 128, 4.

3 Acts 1904, 363, 2.

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1 Worcester: "What is Lyman School for Boys," p. 10.

2 Acts 1898, 158, 4.

3 Acts 1904, 265, 2.

Conclusion

We have traced the development of the laws affecting delinquents through three hundred years. At first these children were treated very harshly for their offences, now they are treated in a much kinder manner, as children needing parental guidance.

In summary let us review how we have progressed over these years. The first notable advance in the treatment of delinquents was the creation of the House of Reformation and Lyman School. They grew out of a recognition of the evils of mixing children with hardened and inveterate criminals. The House of Reformation and Lyman School were at the start actually juvenile prisons, and helped the child only that in his later years he might not be a menace to the State. Lyman School, the first juvenile institution operated by any state was a recognition of the State's duty to care for its unfortunate children. It was felt that a vigorous discipline and hard work would develop these delinquents into law-abiding citizens with a new perspective on life.

Later a better plan was found and put into effect first at the Industrial School for Girls and later at Lyman School. It was a change in administration. The old congregate plan was outmoded and the family system substituted. The children got the proper amount of individual attention, as regards their physical and mental health, their education, and training in general.

The second important advance in the treatment of juvenile offenders is the juvenile court. It has not yet reached the high point that it will. At present it is going through a critical period similiar to that which

Conclusion

Lyman School did in the early years of its existence. The juvenile court idea is definitely progressive in fact it is the chief indicator of the modern era of treatment of delinquents. It typifies the attitude the State should have towards its erring children--that of a kind and helpful parent.

Let us realize that just as there was a time in the history of Lyman School when a change of policy and construction was necessary so also that may be necessary in our juvenile court law. It is imperative that the juvenile organization be extended and developed in order th at all children who must come before the court may have an equal chance. While the "separate sessions" which originated in 1877 were once an argument for the juvenile court law because of their wisdom and understanding nowthey are a hindrance to juvenile justice. The child tried in "separate seesions" does not have the advantage of the understanding and facilities of the full-time juvenile court. The detention problem noticed in 1865 had been an argument that children should be taken out of jails and treated differently than adults. Today there are far too many jail detentions, as was previously mentioned. In the full-time juvenile court there is no such problem. The problem of appeals is also lessened considerably in the full-time juvenile court To abolish the above evils and to give the children advantage of intensive probation and individual study we recommend the extension of full-time juvenile courts throughout the state.

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